



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/168825

PRELIMINARY RECITALS

Pursuant to a petition filed September 21, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 08, 2015, at Milwaukee, Wisconsin.

The issues for determination are whether the evidence demonstrates that Petitioner was overissued FoodShare benefits because he and his significant other lived in the same household and had a child together and failed to report the birth.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Katherine May
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent 3 FoodShare overissuance notices, all dated July 3, 2015. They informed Petitioner that he had been overissued FoodShare in the total amount of \$11,888.00 (after adjustment

noted below) over the period of November 2012 through January 2015. More specifically, the notices indicate the following overpayments for the following periods:

- a. 11/1/12 - 10/31/13; \$4248.00; claim # [REDACTED]
(Changed to \$4221.00 by the agency when it reviewed this case for hearing);
 - b. 11/1/13 - 10/31/14; \$5828.00; claim # [REDACTED];
 - c. 11/1/14 - 01/31/15; \$1839.00; claim # [REDACTED];
3. The reason for this alleged overpayment is that Petitioner and his girlfriend (SM) were living in the same home with separate FoodShare cases but then had a child together and, though SM reported the birth the couple did not report that they were the parents to the agency. That child was born on June 28, 2012.
 4. SM was also sent the overpayment notices described at Finding # 2. She did not file an appeal with the Division of Hearings and Appeals.
 5. The overpayments here consist of the total amount of FoodShare issued to the combined household of Petitioner and SM during the period involved. With the household combined, Petitioner and SM were over the income limit for FoodShare eligibility.

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to agency error may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to client error may be recovered for up to six years after discovery. *Id.*

Additionally, Federal Regulations provide, in relevant part, the following as to who must be included in a FoodShare household:

3.3.1.3 Relationship Rules

7 CFR 273.1(b)(1)

The following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses and spouses,
2. Biological (unless no longer a parent because of adoption), adoptive, or step-parents and their children under the age of 22, and
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

...

FSH, §3.3.1.3.

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that were sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused FoodShare to be issued for which the client was not otherwise eligible; documentation of the benefits actually paid, Case Comments

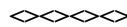
corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, etc. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals. The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

That FoodShare benefits were issued as noted by the agency, that Petitioner and SM were living in the same household and that income was correctly determined by the agency were not disputed here; rather, Petitioner maintains that neither he nor SM knew that they had to report that they were a household when the child in common was born. Nonetheless, the Federal governing the FoodShare program is clear, biological parents and their children must be included in the same FoodShare household. Here Petitioner and SM filed renewals and six month report forms during the time involved. SM did report the birth but neither Petitioner nor SM ever reported that the other parent was in the house. Petitioner never reported that he was the father of the newborn child in the house in his renewals or six month reports. This is not an agency error. I am sustaining the overpayment.

I do note for Petitioner’s benefit the following *FSH* provision as to repayment of an overissuance

- (a) **Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .

7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH), § 7.3.1.1.



7.3.2.6 Allotment Reduction

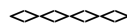
An overissuance due to any type of error will be recovered from a FS group participating in the program by reducing their allotment.

The type of error determines the amount that will be recovered each month.

1. Client/Nonclient error. CARES will reduce the allotment by the greater of 10% of the group's monthly allotment or \$10 each month. The \$10 minimum benefit level for 1 or 2 person groups applies before CARES reduces the allotment.
2. IPV. CARES will reduce the allotment by the greater of 20% of the group's monthly entitlement or \$20 each month. The entitlement is the amount of benefits the group would have received if not for the disqualification of a FS group member. The \$10 minimum benefit level for 1 or 2 person groups applies before CARES reduces the allotment.

CARES will not allow you to reduce the minimum deduction to less than \$10 for Client/Nonclient and less than \$20 for an IPV.

FSH, §7.3.2.6.



7.3.2.12 Repayments

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

FSH, §7.3.2.12.

CONCLUSIONS OF LAW

That the evidence offered by the agency is sufficient to demonstrate that Petitioner was overpaid FoodShare benefits as alleged.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of November, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 19, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability